

**South Dakota Public Utilities Commission Meeting
Tuesday, March 13, 2007, at 2:30 P.M.
State Capitol Building, Room 468
Pierre, South Dakota**

MINUTES OF THE COMMISSION MEETING

Chairman Dustin Johnson called the meeting to order. Present were: Vice Chairman Gary Hanson; Commissioner Steve Kolbeck; Executive Director Patty Van Gerpen; Commission Advisor Greg Rislov; Commission Attorneys Rolayne Ailts Wiest and John Smith; Staff Attorneys Karen Cremer and Kara Van Bockern; Staff Analysts Keith Senger, Harlan Best, Brian Rounds, Jim Mehlhaff, and Bob Knadle; Consumer Affairs Supervisor, Deb Gregg; and Administrative Secretary Demaris Axthelm.

Also present were: Darla Pollman Rogers, Riter, Rogers, Wattier & Brown, representing South Dakota Network LLC.; Mark Shlanta, South Dakota Network LLC.; Mr. Rich Coit, South Dakota Telecommunications Association; Bob Miller, South Dakota Electric Utility Companies; Dave Gerdes, May Adam Gerdes and Thompson, representing Midcontinent Communications and MCC Telephony of the Midwest, Inc. d/b/a Mediacom; Casey Jacobson, Russell Mather, Dick Shaffer and Gene Lebrun, representing Basin Electric Power Cooperative, Inc.

Joining the meeting by telephone were: Rick Hanson, Hesco Incorporated; Chris Howell, Burns and McDonald, representing Basin Electric Power Cooperative, Inc.; Robert Hammer, Tetra Tech; Rich Helsper, Glover & Helsper, representing Brookings Municipal Utilities d/b/a Swiftel Communications; Jim Adkins, Swiftel Communications; Amy Koenig, Sprint Communications Company, L.P. and Alltel Communications, Inc.; Mary Sisak, Blooston, Mordkofsky, Dickens, Duffy and Pendergast, representing Brookings Municipal Utilities d/b/a Swiftel Communications; Wendy Harper, Vantage Point Solutions.

Administration

1. **Approval of the Minutes of the Commission Meetings Held on January 2 and January 23, 2007, and Ad Hoc Meetings Held January 16 and February 1, 2007. (Staff: Demaris Axthelm)**

Commissioner Kolbeck moved to approve the Commission Minutes of January 2, 2007 and January 23, 2007 and Ad Hoc Minutes of January 16, 2007, and February 1, 2007. Vice Chairman Hanson seconded and Chairman Johnson concurred. Motion passed 3-0

Consumer Reports

1. **Status Report on Consumer Utility Inquiries and Complaints Received by the Commission. (Consumer Affairs: Deb Gregg)**

Ms. Deb Gregg reported that the Commission had received a total of 318 contacts. Since the last report was prepared for the February 13, 2007 Commission meeting, 50 contacts involved telecommunication services; 30 contacts involved electricity issues; 16 contacts involved natural gas issues; 11 contacts involved cellular phone issues; 176 contacts involved the Do Not Call Registry; and 35 contacts involved issues not regulated by the Public Utilities Commission. In 2007, 428 of the 582 complaints registered have been resolved informally. In 2006, 2,171 of the 2,466 complaints registered have been resolved informally.

Grain Dealer

1. GD07-001 In the Matter of LW Sales/LW Seed's Failure to Obtain Necessary Licensure Prior to Operation as a Grain Dealer in the State of South Dakota. (Staff Analyst: Jim Mehlhaff, Staff Attorney: Kara Van Bockern)

Ms. Kara Van Bockern stated that the PUC Warehouse Division received a Consumer complaint that LW Sales Inc./LW Seed sold grain without the necessary license. Mr. James Mehlhaff, Director of the Grain Warehouse Division performed an inspection that confirmed Mr. Wheeting of LW Sales/ LW Seeds sold grain without first obtaining the necessary license. Ms. Van Bockern further stated that Mr. Rick Hanson of Hesco Incorporated, an affiant in support of this Motion before the Commissioners, sells the same product as Mr. Wheeting to the same customer. He considers the product to be grain according to both industry and legal standards. The purchasing customer, a Mushroom grower in Pennsylvania, does not require seed. Its intentions are to purchase grain. Mr. Hanson, representing Hesco, explained to the Commissioners that the product sold to the Mushroom grower is Millet and the application it is used for in the spawning industry is to mix the millet with other nutrients to establish a bed for the mushrooms to grow on. Mr. Hanson stated that they sell to four or five other spawning companies for this application and that the Millet purchased is not seed. Vice Chairman Hanson asked if this could have been an accidental violation of the grain dealer statutes, or if Mr. Wheeting was aware of the rules and statutes governing grain sales. Mr. Mehlhaff stated that during his first visit to LW Sales in October 2006, Mr. Wheeting informed him that he had purchased the millet to produce seed. When the millet failed to germinate he sold it as grain to the mushroom companies as described. He said that he knew that he should have a grain dealer's license for this type of transaction but explained that it was an isolated incident caused by the failure of the millet to germinate. Staff believes that Mr. Wheeting clearly knew what he was doing and that in the subsequent sales he identified the millet as seed in an effort to get around the grain dealer statutes. During a second visit to LW Sales, it was found that though Mr. Wheeting called the millet seed, he did not attempt to meet any statutory testing and labeling standards required for seed production. Vice Chairman Hanson followed up by asking if Mr. Wheeting had been involved in past dealings with the PUC. Mr. Mehlhaff responded that yes he had. Ms. Van Bockern stated she has been in contact with Mr. Wheeting's lawyer and that she reserves any arguments for a hearing. Ms. Van Bockern recommends that the Commission issue an Order to Show Cause.

Chairman Johnson moved that the Commission issue an Order to Show Cause. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion passed 3-0

Electric

- 1. EL07-002 In the Matter of the Application of Basin Electric Power Cooperative, Inc. for an Energy Conversion Facility Permit for the Construction of the Groton Generation Station Unit 2 Project near Groton, South Dakota. (Staff Analysts: Keith Senger/Brian Rounds, Staff Attorney: Kara Van Bockern)**

Mr. Russ Mather, representing Basin Electric Power Cooperative (Basin Electric), asked the Commission to issue an energy conversion facility permit for the construction of a second peaking resource generator known as the Groton Generation Station Unit 2 Project. Mr. Mather further stated Basin Electric believes it has satisfied all statutory requirements and has entered into a stipulation with staff. Ms. Kara Van Bockern stated representatives from Basin Electric and staff entered into negotiations on the Stipulation which resulted in some substantive changes and minor wording changes from the stipulation filed for the first generator at the Groton site. In the end, a final Stipulation between staff and Basin Electric was filed. Staff recommended that the Commission approve the Stipulation and grant the Energy Conversion Facility Permit for the Construction of the Groton Generation Station 2. Chairman Johnson asked what substantive ways does the Stipulation for the Groton Generation Station Unit 1 differ from the Groton Generation Station Unit 2. Ms. Van Bockern stated the most substantive difference in the stipulations is the removal of the pipeline issues. Mr. Mather indicated the pipeline and right-of-ways issues were removed because they were not needed for the Groton Generation Station Unit 2 project.

Chairman Johnson moved to approve the Stipulation and to grant the Energy Conversion Facility Permit for Construction of the Groton Generation Station Unit 2 subject to the terms and condition of the Stipulation. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion Passed 3-0

Telecommunications

- 1. TC05-099 In the Matter of the Establishment of Switched Access Revenue Requirement for Fort Randall Telephone Company and Mount Rushmore Telephone Company. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

Mr. Harlan Best stated that on July 1, 2005, Fort Randall Telephone Company and Mount Rushmore Telephone Company filed a switched access cost study. Several parties intervened and then withdrew their Interventions. The only parties that were

eventually involved were Staff, Fort Randall and Mount Rushmore. Staff served several data requests and received timely responses. Modifications were made to the Cost Study, and the rate that has been agreed upon between Staff, Mount Rushmore and Fort Randall is less than the rate approved in the 2002 cost study. Staff recommends that the Commission approve the revised cost study revenue requirement, minutes of use and grant the rates set forth in staff's memorandum with an effective date as soon as Fort Randall/Mount Rushmore can file the tariff sheets.

Commissioner Kolbeck moved to approve the Switched Access Revenue Requirement as specified in Staff's recommendations in Docket TC05-099. Chairman Johnson seconded and Vice Chairman Hanson concurred. Motion passed 3-0

2. TC07-007 In the Matter of the Petition of Brookings Municipal Utilities d/b/a Swiftel Communications for Suspension or Modification of Dialing Parity, Number Portability and Reciprocal Compensation Obligations. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)

Ms. Mary Sisak, representing Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel) stated Swiftel has no opposition to the request for interventions. Ms. Karen Cremer recommended that the Commission grant intervention to Alltel Communications, Sprint Communications Company L.P., Midcontinent Communications, South Dakota Network, LLC, MCC Telephony of the Midwest, Inc. d/b/a Mediacom and South Dakota Telecommunications Association.

Vice Chairman Hanson moved to grant Intervention to Alltel Communications, Sprint Communications Company L.P., Midcontinent Communications, South Dakota Network, LLC, MCC Telephony of the Midwest, Inc. d/b/a Mediacom and South Dakota Telecommunications Association in Docket TC07-007. Vice Chairman Hanson seconded and Commissioner Kolbeck concurred. Motion passed 3-0

3. TC07-008 In the Matter of the Filing by Aventure Communication Technology, L.L.C. for Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company Specific Cost-Based Switched Access Rates. (Staff Analyst: Harlan Best, Staff Attorney: Kara Van Bockern)

Mr. Harlan Best recommended that the Commission grant the exemption from Developing Company Specific Cost-Based Switched Access Rates pursuant to ARSD 20:10:27:11 and approve the Partial Exemption of ARSD 20:10:27:12 with respect to calculation of the Switched Access Rate Applicable in Qwest Exchanges served by Aventure. Mr. Best stated that Aventure proposed to charge the Qwest Switched Access Rate in Qwest Exchanges and Aventure would be charged the LECA-Plus rate in the non-Qwest exchanges as set forth in 20:10:27:12. Mr. Best further recommended that the Commission approve the Switched Access Service Tariff.

Commissioner Kolbeck moved to approve the Exemption from Developing Company-Specific Cost-Based Switched Access Rates Pursuant to ARSD 20:10:27:11, approve the Partial Exemption of ARSD 20:10:27:12 with Respect to Calculation of the Switched Access Rate applicable in Qwest Exchanges served by Aventure and approve the Switched Access Service Tariff according to the stipulations and recommendations made by staff in Docket TC07-008. Vice Chairman Hanson seconded and Chairman Johnson concurred. Motion passed 3-0

- 4. TC07-010 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and MCImetro Access Transmission Services, LLC. (Staff Attorney: Kara Van Bockern)**

Ms. Kara Van Bockern stated that the amendment has been properly filed, has been properly executed and does not appear to contain discriminatory provisions. No comments were filed and staff recommends approval of the Amendment.

Chairman Johnson moved to approve the Amendment in Docket TC07-010. Vice Chairman Hanson seconded and Commissioner Kolbeck concurred. Motion passed 3-0

- 5. TC07-011 In the Matter of the Filing by Northern Valley Communications, LLC for Approval of Revisions to its Intrastate Switched Access Tariff. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)**

Mr. Keith Senger stated that in Docket TC05-197 the Commission approved Northern Valley Communications, LLC's (NVC) settlement agreement that lowered NVC's switched access rate below the LECA Plus rate. In January 2007, the LECA Plus Rate was settled which lowered the LECA Plus rate. In this Docket, NVC has filed a reduction to its Settlement agreement and which moves its rate down to the LECA Plus rate. In July 2007, the NVC rate will automatically be lowered again according to the settlement agreement. The settlement agreement stated that at no time shall the NVC rate exceed the LECA Plus rate. For a period of 21 days, the NVC rate did exceed the LECA Plus rate. Staff recommended that the Commission approve the Tariff Revisions without requiring a refund due to the short time frame of over billing and with an effective date of January 21, 2007, the reason being that the NVC billing cycle begins the 21st of each month.

Chairman Johnson moved to approve the Tariff Revisions without requiring a refund with an effective date of January 21, 2007. Commissioner Kolbeck seconded and Vice Chairman Hanson concurred. Motion Passed 3-0

- 6. TC07-012 In the Matter of the Filing by SSTelecom, Inc. for Approval of Revisions to its Intrastate Switched Access Tariff. (Staff**

Analyst: Keith Senger, Staff Attorney: Karen Cremer)

Mr. Keith Senger stated that this Docket is the same as the previous Docket (TC07-011). SSTelcom is getting a slower start than anticipated and prior to January 1, 2007, SStelecom had not billed for switched access rates and thus no refunds are necessary. Mr. Senger recommended that the Commission approve the Tariff Revisions without requiring a refund.

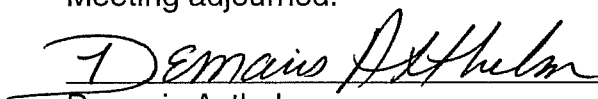
Vice Chairman Hanson moved to approve the tariff revisions without requiring a refund according to staffs recommendations and stipulations. Chairman Johnson seconded and Commissioner Kolbeck concurred. Motion passed 3-0

7. TC07-013 In the Matter of North Shore Marketing's Failure to Register as a Telemarketer and the Solicitations it made to those Registered on the Do Not Call Registry. (Staff Attorney: Kara Van Bockern)

Ms. Kara Van Bockern stated that the Public Utilities Commission was contacted by a consumer that received telephone calls from North Shore Marketing (North Shore) selling magazine subscriptions. Ms. Gregg then contacted North Shore and was informed by North Shore they have no way to check who they call and who's not on the Do Not Call List. Ms. Van Bockern stated North Shore is not registered in South Dakota as a Telemarketer, has denied that the PUC has any authority over this matter and refuses to give any information. Staff asked Commission assistance to enforce Commission rules, statutes and to grant a hearing.

Commissioner Kolbeck made a Motion in Docket TC07-013 to issue an Order to Show cause. Chairman Johnson seconded and Vice Chairman Hanson concurred. Motion passed 3-0

Meeting adjourned.


Demaris Axthelm
Administrative Secretary